STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL LOUKAS, Plaintiff-Appellant,	UNPUBLISHED April 14, 2011
v	No. 296883 Ingham Circuit Court
DEPARTMENT OF CORRECTIONS, Defendant-Appellee.	LC No. 09-000116-AW

Before: GLEICHER, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals by right from and opinion and order granting defendant's motion to dismiss plaintiff's complaint seeking a writ of mandamus and denying plaintiff's motion for summary disposition. We affirm.

On July 27, 1979, plaintiff was sentenced to prison for 13 to 25 years after being convicted of second-degree murder and assault with intent to murder. Following his release on bond pending a new trial, he committed an armed robbery with a firearm. On November 14, 1983, after being convicted for these new crimes, plaintiff was sentenced to 20 to 40 years for the armed robbery conviction and a consecutive term of two years for the felony-firearm conviction. He received 143 days of credit for jail time. The judgment of sentence stated that the sentence was to begin on November 14, 1983. Subsequently, plaintiff was again convicted of second-degree murder and assault with intent to murder. He was sentenced on December 1, 1983 to 20 to 40 years in prison for both convictions, and was granted 1,647 days credit for jail time. This judgment of sentence specified that the sentence was to run consecutive with time being served. It also recited that the sentences were to begin on November 14, 2003 (twenty years after the minimum sentence for the armed robbery conviction).

Plaintiff filed his complaint for a writ of mandamus, and defendant presented in response an affidavit explaining that defendant's sentences were audited and recalculated. The sentences, together with two subsequent sentences for escape and attempted escape, were linked together in a string of consecutive sentences. The start date for this string of consecutive sentences was May 12, 1979. Because the sentence for the 1983 conviction came first, it was treated as the first sentence in the string, followed by the sentence for the 1979 case. The start date for the 1983 conviction, consistent with the judgment of sentence for that conviction, was November 14, 1983. The credit for time served for the 1979 case and the 1983 case were added together and

subtracted from the sentence that began on November 14, 1983. Moreover, defendant received his credit for good time and his disciplinary credits pursuant to MCL 800.33, as well as 540 days reduction pursuant to the Prison Overcrowding Emergency Powers Act, MCL 800.71 *et seq.*, repealed 1987 PA 101.

In dismissing the complaint for a writ of mandamus, the trial court concluded that, regardless of the inclusion of a sentence start date twenty years in the future, the sentence for the murder and assault convictions was ordered to be served consecutively to the earlier sentence, and defendant's sentences were being properly calculated. "A trial court's decision regarding a writ of mandamus is reviewed for an abuse of discretion." *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005). We find no such abuse.

In *Tuggle v Mich Dep't of State Police*, 269 Mich App 657, 668, 712 NW2d 750 (2005), the Court stated:

> The issuance of a writ of mandamus is proper where (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion [or] judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result. Plaintiffs bear the burden of demonstrating entitlement to the extraordinary remedy of a writ of mandamus. [Citations and quotation marks omitted.]

Plaintiff first argues that defendant had the duty to follow the trial court's judgment. But plaintiff's premise is erroneous. The order clearly states that the sentence is to run consecutively to the time being served. The only time that plaintiff was serving was his sentence for the armed robbery and felony-firearm convictions. Thus, defendant was adhering to the trial court's order.

Next, plaintiff cites MCL 800.50 for the proposition that defendant had the duty to maintain proper and adequate records. The identified statute does not require it. Rather, it only requires an officer to deliver the certified copy of sentence and obtain a certificate verifying the delivery. In any event, there is no indication that the defendant was not maintaining proper and adequate records.

Plaintiff also maintains that defendant had a duty to return the judgment to the trial court for correction. In *People v Holder*, 483 Mich 168, 176; 767 NW2d 423 (2009), the Court noted that defendant has an "obligation to ensure that any sentence executed is free from errors." *Holder* indicates that defendant can bring errors to the court's attention but it is purely informational and requests are purely advisory. The Court notes that MCR 6.429(A) permits *either party* to file a motion to correct an invalid sentence and that MCR 6.435(A) permits the court to correct clerical errors on its own motion or that of a party. If a sentence were in fact invalid, a party would be entitled to relief under these court rules. Plaintiff has apparently never moved for correction of his sentence.

Plaintiff also cites to various statutes for the proposition that defendant had the duty to return the judgment of sentence.[1] None of these statutes outlines a clear legal duty on the part of defendant to return a judgment of sentence.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ Jane E. Markey

[1] Plaintiff again cites MCL 800.50, as well as MCL 791.264, which deals with classifying prisoners , MCL 791.234, which clarifies the jurisdiction of the parole board and specifies when a prisoner with consecutive sentences will be eligible for parole, and (4) MCL 771.14(2), which sets forth the requirements of a presentence investigation report.